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# Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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**Sixtieth Session**
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# Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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*Note*

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# Chapter I
## Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 59/44 of 2 December 2004 and met at United Nations Headquarters from 14 to 18 March 2005.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held two meetings, the 247th meeting, on 14 March, and the 248th meeting, on 18 March. The Working Group of the Whole, established at the 247th plenary meeting, held four meetings, the 1st meeting on 14 March; the 2nd meeting on 15 March; the 3rd meeting on 15 March; and the 4th meeting on 16 March. Informal consultations were also held from 15 to 17 March 2005.

4. On behalf of the Secretary-General, the session was opened by the Under-Secretary-General for Legal Affairs, the Legal Counsel, Nicolas Michel.

5. At its 247th meeting, on 14 March, the Special Committee, bearing in mind the terms of the agreement regarding the election of the officers reached at its session in 1981[1] and taking into account the results of the pre-session informal consultations among its Member States held on 10 March 2005, elected its Bureau, as follows:

*Chairman*:
Andreas D. Mavroyiannis (Cyprus)

*Vice-Chairpersons*:
Ruddy José Flores Monterrey (Bolivia)
Ali Hafrad (Algeria)
Emine Gökçen Tuğral (Turkey)

*Rapporteur*:
Tamara Rastovac (Serbia and Montenegro)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

7. The Director of the Codification Division of the Office of Legal Affairs, Václav Mikulka, acted as Secretary of the Special Committee. The Principal Legal Officer of the Division, Anne Fosty, acted as Deputy Secretary of the Special Committee and Secretary to its Working Group of the Whole. The Codification Division provided the substantive services for the Special Committee and its Working Group of the Whole.

8. Also at its 247th meeting, the Special Committee adopted the following agenda (A/AC.182/L.119):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.

5. Consideration of the questions referred to in General Assembly resolution 59/44 of 2 December 2004, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

9. General statements touching upon all or upon several items were made at the 247th meeting as well as, in some instances, prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all the related reports of the Secretary-General,[2] in particular the most recent report, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions" (A/59/334), and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162 of 15 December 1997 (A/53/312); a revised working paper submitted by the Russian Federation at the 2004 session entitled "Declaration on the basic conditions and standard criteria for the introduction and application of sanctions and other coercive measures";[3] a revised working paper also submitted by the Russian Federation at the 2004 session entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (A/AC.182/L.114/Rev.1);[4] a revised working paper submitted by the Russian Federation at the 2003 session entitled "Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.114);[5] an addendum to the revised working paper submitted by the Russian Federation at the 2002 session entitled "List of proposals and amendments to the Russian working paper entitled 'Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation' introduced during the first reading of the paper" (A/AC.182/L.100/Rev.1/Add.1);[6] a revised working paper submitted by the Russian Federation at the 2000 session of the Committee entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100/Rev.1);[7] a working paper submitted by the Russian Federation at the 1998 session of the Committee, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100);[8] a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session of the Special Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1);[9] and a working paper submitted by the Libyan Arab Jamahiriya at the 2001 session of the Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110 and Corr.1).[10]

11. Furthermore, also with regard to the question of the maintenance of international peace and security, the Special Committee had before it an informal working paper submitted by the Russian Federation at the 1997 session of the Committee, entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and

settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[11] a working paper submitted by the Russian Federation at the 1998 session of the Special Committee, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1);[12] a revised proposal submitted by the delegation of Cuba at the 1998 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93/Add.1);[13] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99);[14] a working paper submitted at the 1999 session of the Special Committee by Belarus and the Russian Federation containing a draft resolution of the General Assembly (A/AC.182/L.104/Rev.1);[15] and a revised working paper submitted by Belarus and the Russian Federation at the 2001 session of the Committee containing a revised version of a draft resolution of the General Assembly (A/AC.182/L.104/Rev.2).[16]

12. With regard to the topic "Working methods of the Special Committee", the Special Committee had before it a further revised version of the working paper submitted by Australia, Japan, the Republic of Korea, Thailand and Uganda at the 2004 session for consideration at the current session;[17] a revised working paper also submitted at the 2004 session by Australia, Japan, the Republic of Korea, Thailand and Uganda regarding the working methods of the Special Committee (A/AC.182/L.108/Rev.3);[18] a revised working paper submitted by Japan and the Republic of Korea at the 2003 session containing a draft paragraph to be inserted in the report of the Special Committee (A/AC.182/L.108/Rev.2);[19] a proposal submitted by Japan at the 2002 session on revisions to the draft paragraph to be inserted in the report of the Special Committee (A/AC.182/L.108/Rev.1);[20] a proposal submitted by Japan at the 2000 session for a draft paragraph to be inserted in the report of the Special Committee to improve its working methods and enhance its efficiency (A/AC.182/L.108);[21] and a working paper submitted by the delegation of Japan also at the 2000 session, entitled "Ways and means of improving the working methods and enhancing the efficiency of the Special Committee" (A/AC.182/L.107).[22]

13. At its 248th meeting, on 18 March 2005, the Special Committee adopted the report of its 2005 session.

# Chapter II
## Recommendations and decisions of the Special Committee

14. The Special Committee submits to the General Assembly:

(a) As regards the question of the maintenance of international peace and security, in particular, the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, the recommendations in paragraphs 24 and 25 below;

(b) As regards the question of the maintenance of international peace and security, in particular, the strengthening of the role of the Organization and enhancing its effectiveness, the recommendation in paragraph 47 below;

(c) As regards the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, the recommendation in paragraph 68 below;

(d) As regards the question of identification of new subjects, the decision of the Special Committee contained in paragraph 77 below.

# Chapter III
# Maintenance of international peace and security

## A. Implementation of the Charter provisions related to assistance to third States affected by sanctions

15. The Special Committee considered the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by sanctions during the general exchange of views held at its 247th meeting, on 14 March 2005, as well as during the 1st and 2nd meetings of the Working Group of the Whole, held on the same day.

16. Some delegations emphasized the importance of addressing the question of the implementation of the Charter provisions related to assistance to third States affected by the application of sanctions, a priority item on the agenda of the Special Committee. They expressed support for the continued consideration of this issue within the Special Committee and the Sixth Committee, including the establishment of a working group of the Sixth Committee. Some delegations suggested that attention should also be paid to discussions in other forums of the United Nations, such as the Security Council Informal Working Group on General Issues of Sanctions and the Analytical Support and Sanctions Monitoring Team established in accordance with Security Council resolution 1526 (2004). They encouraged greater interaction between the various sanctions committees and the General Assembly, in particular the Special Committee. Some delegations also noted that the report of the High-level Panel on Threats, Challenges and Change (A/59/565 and Corr.1) contained a number of recommendations relating to sanctions. The view was expressed that, while it would be useful to explore different procedural measures aimed at reducing the impact of sanctions on States, generic efforts or controls that place restrictions on the ability to impose sanctions would be unacceptable.

17. Some delegations pointed out that practical and timely assistance to third States affected by the application of sanctions would contribute to an effective and comprehensive sanctions regime as a whole. It was reiterated by some delegations that sanctions were a means of last resort and should only be applied in response to a threat to international peace and security, in strict conformity with the Charter and international law. Some delegations stressed that sanctions should never be imposed as a punitive measure. They emphasized that sanctions should not be imposed unilaterally, should be limited in duration, should be subject to regular review and should be removed once the reason for their imposition no longer exists or the objective is achieved. The need for preliminary assessment of their short and long-term consequences was also stressed.

18. The delegations that had called attention to the negative consequences of sanctions on third States reiterated the importance of minimizing those effects. While realizing that sanctions could entail unintended negative effects on civilian populations and third States, some delegations expressed the view that sanctions could be and had been effectively applied against States, entities and groups of individuals that threatened international peace and security. They therefore welcomed the continued recourse by the Security Council to targeted sanctions. It was also stressed that even targeted sanctions could entail unintended negative effects on third States.

19. The comments in paragraphs 17 and 18 above were also made by some delegations in relation to the proposal by the Russian Federation, entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (see sect. B below). In particular, the view was expressed that some ideas mentioned in paragraphs 17 and 18 were already reflected in the proposal of the Russian Federation.

20. Some delegations called for strict adherence to the provisions of Article 50 of the Charter. Concerning possible measures, a view was expressed in favour of devising a system to assess the impact of preventive or enforcement measures on third States and exploring practical ways to provide assistance to those States, including setting up a fund or permanent consultative mechanism. It was also suggested that such measures could include according commercial exemptions to affected third States, directly consulting with those States, prompt establishment of compensation mechanisms and giving priority to the contractors of the affected third States for the investments in the target State.

21. Some delegations expressed disappointment that the recommendations and main findings of the ad hoc expert group (A/53/312) had not yet been subject to systematic review by the Special Committee. In their view, the recommendations and main findings of the ad hoc expert group, together with the views of States and international organizations, as reflected in various reports of the Secretary-General, constituted a solid basis for the achievement of concrete results in the Special Committee. Some delegations also stressed the importance of reaching early agreement in the Security Council Informal Working Group on General Issues of Sanctions.

22. The various initiatives, including seminars, workshops, reports and studies undertaken thus far under the auspices of the United Nations on the application of sanctions and their adverse effects were noted by some delegations. In that connection, reference was made to the convening of a seminar on restrictive measures (sanctions) decided in the framework of the United Nations and their implementation by the European Union to be convened in New York on 22 March 2005. Some delegations also encouraged the conduct of comprehensive studies, including the compilation and publication of all information concerning the unintended impacts of sanctions regimes both on primary target States and third States, especially in Africa, as well as assistance extended to them. However, regret was expressed that none of the reports, seminars, workshops or studies had taken place in, or focused on, Africa, even though 10 of the 13 States on which sanctions had been imposed by the Security Council in the last 15 years were in Africa.

23. A statement was made condemning as illegal and abusive the unilateral imposition of sanctions without the imprimatur of the Security Council. It was noted that such an imposition was contrary to international law, led to great suffering among civilians and hampered the right to development. In this regard, it was suggested that the General Assembly be required to approve any imposition of sanctions or other measure of enforcement. It was also suggested that this aspect of sanctions be discussed in the context of sanctions imposed by the United Nations.

24. The Special Committee welcomed the report of the Secretary-General summarizing the deliberations and main findings of the ad hoc expert group meeting convened pursuant to General Assembly resolution 52/162 (A/53/312, sect. IV) and recommended that at its sixtieth session the Assembly should continue to consider,

in an appropriate substantive manner and framework, the results of the ad hoc expert group meeting, taking into account the relevant debate in the Special Committee at its 2005 session, the views of States, the organizations of the United Nations system, the international financial institutions and other relevant organizations, as contained in the reports of the Secretary-General (A/54/383 and Add.1 and A/55/295 and Add.1), as well as the views of the Secretary-General regarding the deliberations and the main findings of the ad hoc expert group[23] and the relevant information to be submitted by the Secretary-General on the follow-up to the note by the President of the Security Council (S/1999/92).

25. The Special Committee also recommended that the General Assembly should address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII of the Charter and the implementation of General Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 13 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999, 55/157 of 12 December 2000, 56/87 of 12 December 2001, 57/25 of 19 November 2002, 58/80 of 9 December 2003 and 59/45 of 2 December 2004, taking into account all reports of the Secretary-General on the subject, the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242 of 15 September 1997 and the forthcoming report of the informal working group of the Security Council on general issues related to sanctions, as well as the proposals presented and views expressed in the Special Committee.

## B. Consideration of the revised working paper submitted by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures"

26. During the general exchange of views held at the 247th meeting, on 14 March 2005, the Russian Federation referred to its revised working paper, entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures", reproduced in the report of the Special Committee for 2004.[24] The sponsor delegation, inter alia, observed that sanctions were extreme measures that should only be taken after determination by the Security Council that a threat to the peace, a breach of the peace or an act of aggression had occurred and stressed they should be imposed in strict compliance with applicable norms of international law.

27. Some delegations expressed support for the revised working paper by the Russian Federation, characterizing it as a good basis for further discussions on this issue. They also expressed appreciation for the efforts made by the sponsor in reflecting the views of other delegations in the latest version of the revised working paper. The view was expressed that operative paragraph 1 of section I of the revised working paper was a considerable and welcome improvement over the corresponding provision of the earlier draft, contained in paragraph 1 thereof. Some delegations stressed that sanctions should be applied in accordance with strict criteria and only when all peaceful means of settlement of disputes had been exhausted. The need for preliminary assessment of the long-term and short-term

consequences of sanctions, for periodic review and for the establishment of precise time frames for sanctions was also stressed.

28. According to another view, the Special Committee should avoid dealing with issues that had been assigned to other bodies and that were being examined by them.

29. At the 2nd meeting of the Working Group of the Whole, on 14 March 2005, the Russian Federation introduced the revised provisions of its proposal, reiterating that the revised text reflected many of the comments and suggestions made by delegations at previous sessions of the Committee. The sponsor delegation also observed that it would be appropriate to conclude the work on the draft declaration with a view to submitting it to the General Assembly during the upcoming commemorative session celebrating the sixtieth anniversary of the United Nations.

30. The Working Group then proceeded to a paragraph-by-paragraph review of the revised provisions of the working paper.

31. The sponsor delegation informed the Working Group of the editorial changes and substantive amendments that it had made to the sixth and twelfth preambular paragraphs, the opening words of section I and operative paragraphs 1, 2, 4, 5, 6, 15 and 23 of section I of the draft declaration.

32. The observation was made that in the sixth preambular paragraph, the words "territorial integrity" appeared twice in the English version of the text. The text should be corrected by aligning the words to the corresponding wording in Article 2, paragraph 4, of the Charter of the United Nations.

33. No comments were made regarding the twelfth preambular paragraph, the opening words of section I or operative paragraphs 1 and 2 of the same section.

34. With regard to operative paragraphs 4 and 5 of section I, the sponsor delegation was asked to clarify why the terms "country" and "State" were used therein interchangeably. The sponsor delegation suggested that the term "State" be used throughout the text.

35. No comments were made regarding operative paragraphs 6, 15 and 23 of section I.

36. In conclusion, the sponsor delegation reiterated its hope that the draft declaration would be submitted to the General Assembly at its upcoming commemorative session.

37. The Chairman invited the sponsor delegation to consult with interested delegations on how to proceed further with the proposal submitted by the Russian Federation.

## C. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

38. The Special Committee considered the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1), contained in the 2002 report of the Special Committee,[25] in the general exchange of views held at the

247th meeting, on 14 March 2005, as well as during the 2nd meeting of the Working Group of the Whole, also held on the same day.

39. The sponsor delegation recalled that the revised working paper had benefited from a section-by-section consideration during the 2002 and 2003 sessions and that a similar procedure was therefore not necessary at the current session. The sponsor delegation reiterated that the proposal by the Russian Federation, entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (see sect. B above), shared two of the three central elements of its own proposal and that the third element was under consideration by the International Law Commission in its work on the topic "Responsibility of international organizations". It was pointed out that in the event the proposal by the Russian Federation was adopted, the two elements of its proposal would be considered as covered. However, it was stressed that such adoption should not be interpreted as withdrawal of its proposal.

40. During the general exchange of views, some delegations suggested that the salient points raised in the revised working paper by the Libyan Arab Jamahiriya be incorporated into the proposal by the Russian Federation.

## D. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"

41. During the general exchange of views held at the 247th meeting of the Special Committee, on 14 March 2005, the sponsor delegation, the Russian Federation, referred to the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations",[26] which it had submitted to the Special Committee at its 1998 session. The sponsor delegation reiterated that the aim of the proposal was to improve United Nations peacekeeping operations, based on the development of a generally recognized legal framework for such operations. The working paper aimed at identifying the key legal elements of such a framework, including a clear definition of the mandate of peacekeeping, limits to the peacekeepers' right to self-defence and the mechanism for apportioning responsibility between the United Nations and troop-contributing States for the damage caused in the course of peacekeeping operations. It also aimed at specifying the basic principles of peacekeeping, including such principles as non-interference in the internal affairs of the States parties to the conflict, neutrality and impartiality.

42. A view was expressed in support of the basic ideas of the proposal and its consideration. It was pointed out that discussions on this issue by other bodies of the United Nations should not preclude the Special Committee from considering peacekeeping from a legal perspective. Other delegations reiterated that the Special Committee should avoid duplicating the work on peacekeeping carried out by other bodies, in particular the Special Committee on Peacekeeping Operations. A point was made that the Special Committee on the Charter had no competence to consider this issue.

43. At the 3rd meeting of the Working Group of the Whole, on 15 March 2005, the sponsor delegation recalled the historical evolution of peacekeeping operations and highlighted their complexity. In that regard, it reiterated the importance of elaborating a legal framework for peacekeeping operations in the context of Chapter VI of the Charter, based on the extensive experience of the Organization in the field. Such a framework could serve as a useful guide in the establishment of future peacekeeping operations. The importance and timeliness of the issue were further demonstrated by its recent mention in the relevant reports of the Special Committee on Peacekeeping Operations and the Secretary-General, as well as in the report of the High-level Panel on Threats, Challenges and Change (A/59/565). The above reports highlighted the need to elaborate uniform definitions relating to peacekeeping operations, owing to the existence of diverse and sometimes confusing terminology in this field. The sponsor delegation also proposed the elaboration of a standard classification of definitions in the area of peacekeeping activities.

44. Although the sponsor delegation acknowledged that the issue was being discussed within other forums at the United Nations, it stressed that the Special Committee had a responsibility to address this question from a legal perspective. It also recalled the possibility of considering the issue jointly with the Special Committee on Peacekeeping Operations.

## E. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

45. During the general exchange of views held at the 247th meeting, on 14 March 2005, some delegations expressed support for the working papers submitted by Cuba (A/AC.182/L.93[27] and Add.1[28]). The view was expressed that these documents raised important elements for the debate regarding the enhancement of the role of the General Assembly in the area of maintenance of international peace and security. It was also observed that democratizing the Security Council and ensuring the transparency of its work was of utmost importance to its effective functioning. A suggestion was also made that it might be useful to study the provisions of the Charter of the United Nations directly related to the work of the General Assembly in order to obtain a standard interpretation of those provisions. Such a study would also assist in further clarifying the roles of the General Assembly and the Security Council in the area of maintenance of international peace and security.

46. At the 4th meeting of the Working Group of the Whole, on 16 March, the sponsor delegation explained that the main objective of its working papers was to analyse the respective functions and competencies assigned to the General Assembly and the Security Council under the Charter in the area of maintenance of international peace and security with a view to enhancing the role of the General Assembly in this field. The sponsor delegation further observed that this topic fell within the mandate of the Special Committee and that the consideration of the working papers would not constitute a duplication of the work of other bodies. The sponsor delegation also referred to provisions of the Charter, resolutions of the

General Assembly and decisions of the International Court of Justice that it considered relevant to its proposal.

47. The Special Committee recognized the value of considering measures within the United Nations with a view to ensuring the revitalization of the General Assembly in order to effectively and efficiently exercise the functions assigned to it under the Charter of the United Nations.

## F. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

48. During the general exchange of views held at the 247th meeting on 14 March 2005, the sponsor delegation emphasized the importance of its proposal in relation to the efforts to strengthen the role of the Organization, in particular the General Assembly and the Security Council, in the area of maintenance of international peace and security (A/AC.182/L.99).[29] It noted that it might be desirable to consider the proposal alongside the proposals made by Cuba on the same topic (see sect. E above).

49. At the 4th meeting of the Working Group of the Whole, on 16 March, the sponsor delegation explained that its proposal aimed at analysing the relationship between the Security Council and the General Assembly in the area of maintenance of international peace and security. The proposal also focused on the question of unanimity of the permanent members of the Security Council and defining decisions of a procedural nature under the Charter of the United Nations.

50. The sponsor delegation acknowledged that different opinions existed among delegations with regard to the matter. It remained hopeful, however, that the Working Group would consider the legal aspects of the matter, especially in the light of the ongoing reform process of the General Assembly and the Security Council. In that connection, the sponsor delegation suggested that the Special Committee should recommend that the Sixth Committee consider the legal aspects of its proposal and the proposal of Cuba (sect. E above) and make the necessary recommendation to the General Assembly.

## G. Consideration of the revised working paper submitted by Belarus and the Russian Federation

51. During the general exchange of views held at the 247th meeting of the Special Committee, on 14 March 2005, some delegations reiterated their support for the revised working paper submitted by Belarus and the Russian Federation at the 2001 session of the Special Committee (A/AC.182/L.104/Rev.2),[30] in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence.

52. At the 3rd meeting of the Working Group of the Whole, on 15 March 2005, the representative of Belarus, as co-sponsor of the proposal, reiterated that the proposed

draft resolution contained in the working paper was based on the principle of the non-use of force or threat of force, one of the fundamental principles of international law as set forth in paragraph 4 of Article 2 of the Charter of the United Nations. The co-sponsor stressed that the use of armed force in international relations was governed by the peremptory norms of the Charter and was permissible only in the exercise of the right of self-defence, pursuant to Article 51 of the Charter, or on the basis of a decision of the Security Council, in accordance with Articles 39 and 42 of Chapter VII of the Charter, that is, in case of any threat to the peace, breach of the peace, or act of aggression. It was further observed that new approaches had recently emerged concerning the use of armed force, including a unilateral use of force, without authorization by the Security Council. An advisory opinion of the International Court of Justice would contribute to the uniform interpretation and application of the relevant provisions of the Charter. The need for such an opinion has been demonstrated also by the current debate by States on the recommendations of the High-level Panel on Threats, Challenges and Change concerning the system of collective security and the use of force. The co-sponsor stated that the sponsors intended to submit and introduce a revised version of their proposal at the current session of the Special Committee.

53. The other co-sponsor, the representative of the Russian Federation, expressed his full support for the revised working paper and stated that the proposal was especially relevant today when considering the recommendations concerning non-use of force in international relations, as contained in the report of the High-level Panel on Threats, Challenges and Change (A/59/565).

54. Another delegation stated that it had not yet formed an opinion on the content of the proposal but was of the view that, because of the drafting of the proposal, the International Court of Justice might reject the request for an advisory opinion. It was felt that a revision would be helpful.

55. The delegation that made the observation reflected in paragraph 166 in the 2003 report[31] of the Special Committee reiterated that observation.

56. On 17 March, the sponsor delegations submitted a revised version of the working paper for consideration at the 2006 session of the Special Committee containing a revised version of a draft resolution of the General Assembly, which reads as follows:[32]

"*The General Assembly*,

"*Reaffirming* that, pursuant to the Charter of the United Nations, the maintenance of international peace and security and the development of friendly relations and cooperation among States are one of the basic purposes of the Organization,

"***Referring to* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Declaration on the Strengthening of International Security, the Definition of Aggression, and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations,**

"***Expressing* its determination to promote the implementation of the United Nations Millennium Declaration, adopted by all States Members of the United Nations on 8 September 2000, confirming the commitment to**

**the purposes and principles of the Charter of the United Nations, which have proved timeless and universal,**

"*Confirming* the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of States, or in any other manner inconsistent with the purposes of the United Nations, and also that the threat or use of force is a violation of international law and of the Charter of the United Nations,

"*Recalling once again* that no considerations, whether political, economic, military or of any other kind, may be used to justify the threat or use of force in violation of the Charter of the United Nations,

"*Recalling* the primary responsibility of the Security Council pursuant to the Charter of the United Nations for the maintenance of international peace and security,

"*Referring* to Chapter VIII of the Charter of the United Nations, which acknowledges the role of regional arrangements or agencies in dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations,

"*Recalling* that the General Assembly may request the International Court of Justice to give an advisory opinion on any legal question,

"1. *Affirms* that action by air, sea or land forces of all Members of the United Nations or by some of them for purposes of the maintenance of international peace and security is permissible only on the basis of a decision of the Security Council pursuant to Chapter VII of the Charter of the United Nations or in exercise of the inherent right of individual or collective self-defence pursuant to Article 51 of the Charter of the United Nations;

"2. *Emphasizes* the immutability of the provisions of Article 53, paragraph 1, of the Charter of the United Nations to the effect, inter alia, that no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council;

**"2 bis. Considers that the maintenance of the principle of the non-use of force in international relations, with maximum effectiveness and the highest legality, can be ensured only on the basis of the further progressive development and codification of international law and by putting into practice the principles and provisions of the Charter of the United Nations and adapting them to the changing nature of international relations and new global realities;**

"3. Pursuant to Article 96, paragraph 1, of the Charter of the United Nations, *requests* the International Court of Justice to give an advisory opinion on the following legal question:

"– What are the legal consequences of the use of armed force by a State or group of States without a decision of the Security Council taken pursuant to Chapter VII of the Charter of the United Nations, except in exercise of the right to individual or collective self-defence pursuant to Article 51 of the Charter?"

# Chapter IV
# Peaceful settlement of disputes

57. The Special Committee considered the item "Peaceful settlement of disputes" during the general exchange of views held at the 247th meeting, on 14 March, as well as during the 4th meeting of the Working Group of the Whole, on 16 March 2005.

58. Stressing the importance of the peaceful settlement of disputes, some delegations acknowledged achievements made in that regard by the Special Committee in the elaboration of such instruments as the Manila Declaration on the Peaceful Settlement of International Disputes[33] and the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field[34] as well as the publication of the *Handbook on the Peaceful Settlement of Disputes between States*.[35] In this regard, the view was expressed that the *Handbook* should be regularly updated and disseminated widely.

59. Some delegations also reaffirmed the important role played by judicial bodies, in particular the International Court of Justice and the International Tribunal of the Law of the Sea. The need to make use of the existing methods and procedures for the prevention and the peaceful settlement of disputes was underscored, while the principle of free choice of means was emphasized. Some delegations also underlined the importance of fact-finding, and acknowledged the frequent recourse to fact-finding missions by the Security Council as well as the role played by Special Representatives of the Secretary-General. Noting that some fact-finding missions had encountered difficulties, the need to take adequate measures to avoid such difficulties in future missions was emphasized.

60. At the 4th meeting of the Working Group, on 16 March, the point was made that discussion of this item would continue to be of little practical value as long as there was no specific proposal in connection therewith for consideration by the Committee.

# Chapter V

## Proposals concerning the Trusteeship Council

61. During the general exchange of views held at the 247th meeting of the Special Committee, on 14 March 2005, a view was expressed that the Trusteeship Council should be abolished since its mandate had been fulfilled and that a proposal to this end should be addressed to the General Assembly and considered by the Special Committee in connection with the ongoing reform of the Organization. According to another view, the Council should be assigned new functions in the context of future amendments to the Charter of the United Nations. Some delegations reiterated their view that it would be premature to abolish the Trusteeship Council or to change its status. It was pointed out that the abolition of the Council or changing its status should be considered in the overall context of the reform of the Organization and the amendments to the Charter. It was suggested that States whose territories or neighbouring territories were placed under trusteeship in the past be invited to present their views on this issue at subsequent sessions of the Special Committee.

# Chapter VI

## *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*

62. During the general exchange of views held at the 247th meeting of the Special Committee, on 14 March 2005, the delegations welcomed the ongoing efforts by the Secretary-General aimed at reducing the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and supported the continuation of their publication by the Organization. Some delegations stressed the importance and usefulness of both publications, since they allow easy access to the historical record of the practice of United Nations organs. Support was expressed for the conclusions contained in the report of the Secretary-General on the publications (A/59/189), as well as for the relevant provisions of General Assembly resolution 59/44, including those on the establishment of a trust fund for the elimination of the backlog in the preparation of the *Repertory*. The progress made towards making the *Repertory* available on the Internet without cost to the United Nations was also welcomed.

63. At its 4th meeting, on 16 March 2005, the Working Group of the Whole was briefed by the Secretariat on the status of the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*.

64. Concerning the *Repertory of Practice of United Nations Organs*, it was pointed out that while the preparation of individual studies continued in 2004-2005, owing to the lack of funds, work had slowed down considerably and had even stopped in some offices. The Interdepartmental Committee on Charter Repertory had recently considered several measures to streamline and ensure quicker production of the publication. The Departments also expressed their readiness to involve interns, to be trained by the Codification Division of the Office of Legal Affairs, in the preparation of the *Repertory* studies.

65. Concerning the *Repertoire of the Practice of the Security Council*, it was reported that progress had been achieved in the elimination of the backlog, including by posting the studies on the web site and producing a more streamlined version of the *Repertoire*. Such progress was made possible by the Trust Fund for the *Repertoire*, which, however, has already been depleted. Accordingly, a call was made to Member States to continue to contribute to the Fund, including in the form of sponsoring an Associate Expert position in the relevant branch of the Secretariat.

66. Some delegations commented on the reports presented by the Secretariat and asked questions. They expressed their support for measures aimed at making the publications more concise and user-friendly and for the involvement of interns in their preparation. Concern was expressed however that in some departments the work on the *Repertory* studies had practically stopped, while it was not clear whether those departments had recourse to the assistance of interns in the preparation of the studies.

67. In their response, the representatives of the Secretariat provided details concerning the current involvement of interns, which was mainly in research work for the studies.

68. The Special Committee on the Charter of the United Nations recommended to the General Assembly that it encourage:

(a) Voluntary contributions to both the Trust Fund for Updating the Repertoire of the Practice of the Security Council and the Trust Fund for the elimination of the backlog on the Repertory of Practice of United Nations Organs;

(b) The sponsoring, on a voluntary basis, and with no costs to the United Nations, of associate experts to assist in the preparation of the studies of both the *Repertoire of the Practice of the Security Council* and the *Repertory of Practice of United Nations Organs*;

(c) The Secretary-General to enhance cooperation with academic institutions and the use of the internship programme for the preparation of studies of both the *Repertoire of the Practice of the Security Council* and the *Repertory of Practice of United Nations Organs*.

# Chapter VII
# Working methods of the Special Committee and identification of new subjects

## A. Working methods of the Special Committee

69. During the general exchange of views, held at the 247th meeting of the Special Committee, on 14 March 2005, Japan, together with the other co-sponsors, Australia, the Republic of Korea, Thailand and Uganda, referred to a revised working paper reproduced in the report of the Special Committee for 2004[36] and emphasized the importance of improving the working methods of the Special Committee and enhancing its efficiency. Some delegations supported the suggestions made in the revised working paper. The point was made that, in the general context of the reform of the Organization, ways and means could be explored with a view to improving the efficiency of the Special Committee in a pragmatic and consensus-seeking spirit. It was also stressed that the work of the Special Committee should not be curtailed and that all proposals by Member States should be discussed on an equal footing.

70. At its 3rd meeting, on 15 March 2005, the Working Group of the Whole considered the revised provisions of the working paper, paragraph by paragraph. Japan explained that the most recent revisions to the proposal were made in order to reflect the suggestions of other delegations at the previous session of the Special Committee. The point was made that the intention was not to restrict Member States in their participation in the work of the Special Committee. It was also observed that the proposal was meant to provide guidelines for the improvement of the Special Committee's working methods. In view of concerns regarding the productivity of the Special Committee, in particular at the present time, a call was made to seriously consider ways to improve its working methods.

71. Also at the 3rd meeting of the Working Group, Japan explained the specific reasons for the editorial and substantive changes made in subparagraphs (b) and (c) to the revised working paper during the previous session. In addition, it pointed out that in subparagraph (b) (iii), the word "likelihood" had replaced the word "possibility", and that in subparagraph (c) (i), the words "rationalize the use" had replaced the phrase "minimize the unnecessary use".

72. No comments were made on the proposed changes.

73. The Chairman then invited the sponsor delegations to consult with other interested delegations on how to proceed further with the working paper. A suggestion was made that, as there seemed to be broad support for the proposed provisions, the Special Committee could move forward during the current session with a view to finalizing them.

74. At the 248th meeting, on 18 March, Japan announced a further revised working paper, which it emphasized had been prepared based on informal consultations during the current session of the Special Committee. The text reads as follows:

> "In response to a request made in accordance with paragraph 3 (e) of General Assembly resolution **59/44** of **2** December **2004**, the Special Committee agreed

on the following points to improve its working methods and enhance its efficiency:

"*(a) Any delegation wishing to submit a new proposal is encouraged:*

"*(i) To bear in mind the mandate of the Special Committee as set out in General Assembly resolution 3499 (XXX) of 15 December 1975, and to ascertain, to the extent possible, that the new proposal would not entail* **exactly** *the same work being done by other bodies on the same subject,* **without prejudice to** *the rights of delegations to make proposals;*

"*(ii) To submit the proposal as far in advance of the session as possible;*

"(b) A delegation submitting a proposal is encouraged:

"(i) To request the Committee to conduct a preliminary exchange of views as to its usefulness **for the Member States** at the first meeting of the Committee, bearing in mind the right of each State to submit proposals in keeping with the mandate of the Special Committee;

"(ii) After an exchange of views is held on its proposal, to assess the priority of the proposal in comparison with other proposals discussed in the Committee, and to consider, where appropriate, the postponement or biennialization of the consideration of its proposal, without prejudice to the right of any States to submit proposals;

"(iii) After the proposal has been discussed at reasonable length, to ask the Committee, where appropriate, to look into the usefulness of further discussing the proposal, taking into account the likelihood of reaching a consensus in the future in the light of paragraph 5 of General Assembly resolution 50/52 of 11 December 1995;*

"(c) The Special Committee is determined:

"(i) To ensure that the meeting is conducted as efficiently as possible in order to rationalize the use of time and resources, including allocated conference services;

"(ii) To accord priority to the consideration of those areas on which general agreement is possible, bearing in mind paragraph 2 of General Assembly resolution 3499 (XXX) of 15 December 1975;

"(iii) To consider, where appropriate, the question of the duration of its next session with a view to making an appropriate recommendation to the General Assembly;

"*(iv) To review as and when necessary other ways and means of improving its working methods and enhancing its efficiency, including ways and means of improving the procedure for the adoption of its report.*"

* In the event that a delegation submitting a proposal withdraws its proposal, such withdrawal does not preclude the delegation from subsequently resubmitting it, if the delegation considers that with the passage of time the proposal has become more useful.

## B. Identification of new subjects

75. At the 247th meeting, on 14 March 2005, Trinidad and Tobago suggested that the Special Committee consider, during the current session, its future role in the implementation of any decisions that might be taken at the High-level Plenary Meeting of the sixtieth session of the General Assembly, to be held in September 2005, regarding those recommendations outlined in the report of the High-level Panel on Threats, Challenges and Change (A/59/565 and Corr.1) relating to the Charter of the United Nations.

76. At the 4th meeting of the Working Group of the Whole, on 16 March, Trinidad and Tobago informed the Special Committee that at informal consultations regarding its proposal a draft decision had been prepared. It further emphasized that the draft decision was not intended to encourage the Special Committee to engage in political debates, but rather to play an appropriate role in the implementation of any decisions taken by the High-level Plenary Meeting that may concern the Charter. Support was expressed for the draft decision, which was approved by the Working Group.

77. At the 248th meeting, on 18 March, the Special Committee adopted the decision approved by the Working Group, which reads as follows:

> "The Special Committee expresses its readiness to engage, as appropriate, in the implementation of any decisions that may be taken at the High-level Plenary Meeting of the sixtieth session of the General Assembly in September 2005 that concern the Charter of the United Nations and any amendments thereto".

*Notes*

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

[2] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346 and A/59/334.

[3] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 33* (A/59/33), para. 70.

[4] Ibid., para. 32.

[5] Ibid., *Fifty-eighth Session, Supplement No. 33* (A/58/33), para. 39.

[6] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 54.

[7] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), paras. 50-97.

[8] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 45.

[9] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.

[10] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 116.

[11] Ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 58.

[12] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[13] Ibid., para. 84.

[14] Ibid., para. 98.

[15] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 101.

[16] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 178.

[17] Ibid., *Fifty-ninth Session, Supplement No. 33* (A/59/33), para. 115.

[18] Ibid., para. 112.

[19] Ibid., *Fifty-eighth Session, Supplement No. 33* (A/58/33), paras. 187-205.

[20] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 171.

[21] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), para. 195.

[22] Ibid., paras. 163-193.

[23] A/57/165 and Add.1. See also A/56/303, A/58/346 and A/59/334.

[24] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 33* (A/59/33), para. 70.

[25] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.

[26] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 73 (A/AC.182/L.89/Add.2 and Corr.1).

[27] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), para. 59.

[28] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 84.

[29] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 98.

[30] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 178.

[31] Ibid., *Fifty-eighth Session, Supplement No. 33* (A/58/33), para. 166.

[32] The wording appearing in boldface type reflects the changes made to the provisions set out in the previous working paper (A/AC.182/L.104/Rev.2). The revised working paper was not issued as an official document of the Special Committee.

[33] General Assembly resolution 37/10, annex.

[34] General Assembly resolution 43/51, annex.

[35] United Nations publication, Sales No. E.92.V.7.

[36] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 33* (A/59/33), para. 115.

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